

**LAKE COUNTY PLANNING BOARD**  
**Lake County Courthouse, Large Conference Room (Rm 316)**

**September 13, 2017**

**Meeting Minutes**

**MEMBERS PRESENT:** Steve Rosso, Dave Goss, John Fleming, Janet Camel

**STAFF PRESENT:** Jacob Feistner, Clint Evenson, Lita Fonda

Steve Rosso called the meeting to order at 7:22 pm. He acknowledged there was not a quorum. The meeting was postponed and adjourned at 7:23 pm.

**September 20, 2017**

**Meeting Minutes**

**MEMBERS PRESENT:** Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, Janet Camel, Dave Goss

**STAFF PRESENT:** Jacob Feistner, Clint Evenson, Lita Fonda

Steve Rosso called the meeting to order at 7:02 pm. He noted this was the meeting of 9/13/17 delayed to 9/20/17.

**WOLF POINT WAY SUBDIVISION: AMENDMENT & VARIANCE (7:03 pm)**

Jacob Feistner presented the staff report. (See attachments to minutes in the Sept. 2017 meeting file for staff report.) He suggested that attachments 1 and 4 would be very helpful in this presentation. In the first paragraph of the staff report, he corrected 'Bouchard Tracts' in the second line to 'Wolf Point Way'.

Jacob talked about the 100-foot vegetative buffer at Lee's request. Many zoning districts had a 50-foot buffer. Here there was a 100-foot buffer where they were required to maintain a vegetative buffer around the lake to deal with stormwater and wildlife habitat. A vegetative buffer plan detailed what could be done within that area. This was included in the staff report. It didn't allow for additional residential structures to be built [in the buffer] and if a structure needed to be replaced, it had to be relocated. Lee asked about the removal of the 3 trees. Jacob replied they'd have to look at the language in the vegetative buffer. They were here to talk about the language that said the structure couldn't be replaced in that area rather than the trees. Ideally they wanted to preserve vegetation.

Dave said it was more common for a purchaser to bring a request, where restrictions were already in place. This appeared to be the same owner who put in the restrictions who was asking for a variance. Why was the setback originally approved? Jacob explained this was what the subdivision regulations required. The landowner didn't ask for a variance. Now they had a need to repair their home and the approval didn't allow it. Lee checked that each subdivision could have its own setbacks. Jacob said unless a variance was requested, every subdivision approved under these regulations would have these same [minimum] setbacks. Frank pointed to different

setback required by different regulations. Why were these inconsistent? He thought these should be performance-based rather than an arbitrary number. It seemed like if they were trying to protect the lake, an arbitrary number was arbitrary, especially when it was inconsistent. Steve and Frank talked about the setback and the subdivision regulations.

Jacob mentioned the planners did a little research to find the origin of the number for the setback. It looked like the planners didn't want an arbitrary number. They wanted to pick something based on science. They used a USGS study from Washington State and comments from the Flathead Lakers. The recommendations were for a setback of at least 150 feet from waterways.

Marc Carstens, agent for the owner, spoke about the proposal. He was involved with the original subdivision. At the time that the 150-foot setback was imposed, the 2010 subdivision regulations were largely uncontested or tried by the public base. He'd been to some of the meetings, and people didn't attend. They were still reeling from the 2008 crash. He thought this setback might have been further refined otherwise. The owner found the subdivision process onerous, and a point was reached to decide to bite the bullet or call it off. The family had plans involving dividing the property so they went forward. They would like to have option #1 since it was the simplest. He thought option #2 would probably best serve both sides and was the most straightforward. At the time of the subdivision, the landowner didn't think the structure would require significant repair. They'd had this discussion at the time of the subdivision. Time caught up with the structure and it required some significant changes. Enough structure, family memory and heart existed in that location to make the attempt to keep the location and ask the Board to work with them to repair the home. He thought option #3 could become somewhat subjective. Option #2 seemed to be a fair solution.

Lee noticed a building height restriction of 30 feet. Would this building comply with 2 stories? Marc said this was an average height. Hu Beaver stated 24 feet. Hu clarified for Steve that the front edge of the deck would stay where it was at, with the building increasing by 8 feet in the back. He thought the other end was put on about 12 years ago. He recalled they divided the property for the kids into a 3-lot subdivision. This had been a cabin built in the 1940's.

Steve checked that the front yard was grass down to the water. There wasn't much of a buffer right now, as far as a variety of native plants and so forth.

*Public comment opened:*

Hu Beaver said subdivision rules were strict for a subdivision. They were trying to amend a little to make this remodel happen.

Lee asked if the 3 trees had to be removed to allow the building. Hu said they were about a foot from the building in the back. They were in the building site.

*Public comment closed.*

Steve suggested considering something like option 2 and adding a couple more statements of fact. Possibly on pg. 4, a statement like, "Vegetative buffers next to water bodies are common in land use regulations throughout Lake County. Lake County zoning district regulations affecting

development of Flathead Lakeshore properties typically have setbacks and vegetative buffers of 50 feet from the high water shoreline.” He thought this reflected the fact that existed in the other zoning districts. He suggested adding another statement of, “One hundred fifty-foot setbacks and 100-foot buffers are important on properties that have uses that result in high impacts to water quality, for instance, ag production, livestock grazing and some industrial uses.” They should recognize the possible reason why this started out this way and also make a statement as to why [the Board] would want to reduce it from the 150 and 100 feet. If they did reduce it to 50 feet to reflect what was typical of zoning district regulations or zones around the lake, they would then approve a variance, in this case for this construction. The idea would be the 50-foot buffer and setback would apply for future buildings constructed. If the applicants wanted to expand again, or if they wanted to build a new building, they’d have to move it back to the 50-foot setback.

Frank asked about the topography if it had to be moved back in the future. Steve said it was hard to tell here and referred to attachment 4. Frank and Steve checked that this required a variance and Jacob replied not necessarily. It was in a subdivision but not in zoning. Steve said if they changed the setback to 35 feet, the entire building was outside the setback. With a 50-foot setback, 15 feet of the building would still be inside the setback. Jacob thought it would be cleaner to put it at 35 feet. With the slope issues, it would be difficult to build more down there anyway. Steve asked about the structure currently behind the house. Part of it looked like it was on the 25% slope. Jacob answered that was the guesthouse. He identified for Lee that the red shapes on the attachment were potential building sites. They could have lakeshore property with the house located 200 feet from the lake. Jacob shared a photo. Steve checked with Jacob about nearby existing zoning districts and setbacks. Jacob supplied that Masumola was nearby, with 50-foot lakeshore setback. Kings Point zoning had 30-foot lakeshore setbacks. Sigurd thought 35 feet seemed reasonable.

Rick asked about staff’s greatest concern with option 2. Jacob replied he didn’t have problems with option 2. It allowed them to develop away from the lake but not towards the lake from where they were at. It preserved what there was for a vegetative buffer. It would be in the ballpark with the zoning district across the bay and with the lots around it (outside the subdivision). Lee asked if a new septic system would go with this property. Hu said it was proposed and gave some description. Lee summarized that the septic system would be improved and move things further from the lake. Hu noted there weren’t a lot of building sites on this lot and gave detail.

Dave thought other structures around the lake would be in a similar situation to this, now or in the future. He would rather save old buildings than tear them down. They might want to visit the definition of ‘replacement’. He liked the philosophy of doing the least amount you had to do to accomplish the desired result. They could either deal with each structure as it came up or they could recognize that there were older structures that were going to need some work where people were going to want to retain their location, even if it was within the setback. Steve noted this type of situation came to the Board of Adjustment quite often. The people were encouraged as non-conforming structures deteriorated or were destroyed, to build new structures that met the regulations.

Rick thought option 2 sounded like a consensus. Lee asked if Flathead County had similar rules and setbacks. Steve said Flathead County had a different form of zoning, which he described generally.

Steve asked about adding findings of fact. John asked about the wording of Steve's earlier addition and if that was compatible with option 2. Steve repeated: "Vegetative buffers next to water bodies are common in land use regulations throughout Lake County. Lake County zoning district regulations affecting development on Flathead Lakeshore properties typically have setbacks and vegetative buffers of 50 feet from the high water shoreline. One hundred fifty-foot setbacks and 100-foot buffers are important on properties that have uses that result in high impacts to water quality, for example, ag production, livestock grazing and some industrial uses." He thought this fact could certainly be put in the findings of fact. He didn't think mentioning the 50 feet in most zoning districts would be a problem if they picked option #2 with 35 feet. This also wasn't in a zoning district. Frank thought it would be good to put this in the findings of fact. It documented why this seemed reasonable.

**Motion made by Rick Cothorn, and seconded by Sigurd Jensen, to recommend option 2 as written with the two added findings of fact.** Jacob noted that would have to be carried out throughout the approval, findings, covenants, buffer plan and on the plat. The findings started on the bottom of pg. 4 and ended on pg. 6. Steve said those would need to be changed to 35-foot setback and buffer. Motion carried, 7 in favor (Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, Dave Goss) and one abstention (Janet Camel).

#### **MINUTES (7:53 pm)**

**5/10/17 Minutes: Motion by Steve Rosso, and seconded by Rick Cothorn, to approve the May 10, 2017 meeting minutes as written. Motion carried, 6 in favor (Steve Rosso, Sigurd Jensen, Rick Cothorn, Frank Mutch, Janet Camel, Dave Goss) and 2 abstentions (John Fleming, Lee Perrin).**

**6/14/17 Minutes:** On pg. 6 in the 8<sup>th</sup> line, Steve eliminated 'not' after 'Seattle was'. On pg. 9, in the last line of the 3<sup>rd</sup> paragraph, he changed 'Los' to 'Las'. Janet commented on the next to last paragraph on pg. 5. The gas tax formula was negotiated between the 7 reservations and the State, and the State came up with the formula, not the Tribes, based on the number of Tribal members who live on the reservation. The State also determined the formula for the money that went to the counties from the gas tax. It was based on the fact that the State could not tax Tribal members on the reservation although the Federal government could. If there was an issue there, the Commissioners needed to take that up with the State for a more equitable distribution of those gas tax funds to the counties. **Motion by Steve Rosso, and seconded by Frank Mutch, to approve the June 14, 2017 meeting minutes as amended. Motion carried, 7 in favor (Steve Rosso, Sigurd Jensen, Rick Cothorn, Frank Mutch, Dave Goss, Lee Perrin, John Fleming) and one abstention (Janet Camel).**

#### **OTHER BUSINESS (7:58 pm)**

Jacob thanked the Board members for showing up for an extra night.

**Meeting adjourned by Steve Rosso, chair, at 7:58 pm.**